

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Amendment of Parts 73 and 74 of the )  
Commission's Rules to Establish Rules for Digital ) MB Docket No. 03-185  
Low Power Television, Television Translator, and )  
Television Booster Stations and to Amend Rules )  
for Digital Class A Television Stations )

To: The Commission

**COMMENTS OF COX BROADCASTING, INC. AND  
THE LIBERTY CORPORATION**

Cox Broadcasting, Inc. ("Cox") and The Liberty Corporation ("Liberty") (collectively, the "Joint Broadcasters"),<sup>1</sup> by their attorneys, hereby submit these comments in response to the Commission's *Notice of Proposed Rule Making* in the above captioned-proceeding.<sup>2</sup> The Joint Broadcasters, through a parent company or subsidiaries, own commercial television stations that are primary on the spectrum where digital low power television ("LPTV")<sup>3</sup> and Class A television stations would operate on a secondary basis. The Joint Broadcasters support allowing LPTV and Class A stations to "flash-cut" to digital on their existing channel and believe it is important that the Commission begin considering the best means for doing so, as such stations will enhance rural service and over-the-air broadcasting. Nevertheless, to prevent interference

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<sup>1</sup> See Exhibit A.

<sup>2</sup> Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, *Notice of Proposed Rule Making*, FCC 03-198 (rel. Aug. 29, 2003) ("*Notice*"). According to publication in the *Federal Register*, these comments are timely filed. See 68 Fed. Reg. 55566 (Sept. 26, 2003).

<sup>3</sup> In referencing low power television or LPTV stations, the Joint Broadcasters mean to include both LPTV and television translator stations.

and avoid needless uncertainty and delay, the Commission should refrain from assigning additional spectrum to any digital LPTV or Class A stations for paired channels or new non-incumbent stations until complicated repack issues for full power television stations are more fully resolved.

After the DTV transition ends and analog service ceases, full power stations will resume single channel operation on Channels 2-51. The Commission has proposed that commercial stations must elect their permanent in-core channel for “repack” purposes by May 1, 2005,<sup>4</sup> but has yet to adopt policies to address important repack issues that must be resolved. Introducing yet another unknown and uncertain element to the DTV mix while repack is unsettled only will complicate and extend the transition.

**I. THE COMMISSION SHOULD NOT ASSIGN ADDITIONAL SPECTRUM TO DIGITAL LPTV, CLASS A, OR NON-INCUMBENT STATIONS PRIOR TO RESOLVING COMPLICATED REPACK ISSUES FOR FULL POWER TELEVISION STATIONS.**

**A. Expanding Spectrum Use Prior to Resolving Complicated Repack Issues Unnecessarily Will Complicate an Already Complex Repack Task.**

To ensure the future success of digital LPTV and Class A stations in the broadcast spectrum and prevent interference to television viewers, the Commission should not assign incumbent or non-incumbent digital LPTV and Class A stations additional spectrum until repack issues are more fully resolved. The Commission has yet to adopt a date by which stations must elect their permanent, in-core channel and has not announced repack policies or guidelines. Accordingly, to meet the proposed May 1, 2005 election date, we understand that some broadcasters are commencing informal efforts to develop a comprehensive repack plan and are

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<sup>4</sup> See Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Notice of Proposed Rule Making*, 18 FCC Rcd 1279, ¶ 25 (2003)(“*Second Periodic Review NPRM*”).

basing it upon replication and service loss prevention goals. Indeed, they are discovering that this is an extremely complex task. First, post-transition broadcast spectrum will be heavily congested in a number of areas, endangering replication goals and likely creating service losses. The problem can be so significant that broadcasters are exploring the possibility that some full power stations may elect a third channel (*i.e.*, not one of the station's paired channels) for permanent use. Second, repack likely will entail numerous daisy chain problems. Presuming for the moment that a full power station is restricted to electing one of its two in-core channels, in many cases the preferable election choice depends on the election decisions of neighboring stations – a dilemma that quickly can cascade into lengthy daisy chains. Third, many broadcasters have changed transmitter sites from the ones referenced in the DTV Table, raising questions about what constitutes replication. Fourth, even when broadcasters settle on a repack plan, numerous stations will have to await clearance from Canada and Mexico, and present experience suggests that delays could be significant. Fifth, it is difficult for broadcasters to make repack decisions given the level of regulatory uncertainty surrounding the election process.<sup>5</sup> And lastly, broadcasters' channel election during repack is not a minor issue: a station's elected channel will be its permanent channel. If the station receives an inadequate allotment, there will be few options to fix it in a world with fewer channels.

Authorizing additional spectrum for digital LPTV and Class A stations at this time would impede the repack process by further congesting an already congested spectrum and further

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<sup>5</sup> For example, the Commission has reserved the right to reject a station's election decision to "minimize interference and maximize [] efficiency of broadcast allotments in the public interest." *Second Periodic Review NPRM*, ¶ 27. However, it is unclear whether the Commission might reject the election of both of a station's assigned channels and instead assign a station an entirely new allotment. In addition, it is unclear whether stations with a single in-core allotment will be required to elect that channel and whether channels surrendered at the end of the DTV transition could be elected by stations which have undesirable allotments.

complicating an already complicated task. As the Commission has acknowledged, there is limited spectrum available – and such amounts only will become more scarce as new primary services begin to operate on the reallocated 700 MHz spectrum.<sup>6</sup> On the other hand, after the repack issues are more fully settled, low power stations will have more opportunities available. Moreover, the Commission’s proposed paired channel policy, under which paired operation is allowed where the barest of overlap exists, will further congest the spectrum. Many low power stations likely will avail themselves of this policy as means to expand their effective service areas. Furthermore, as the Commission notes, existing low power broadcasters at least for some time would be more likely to seek additional spectrum rather than flash-cut.<sup>7</sup> Also, under the Commission’s proposed filing approach, non-incumbents and certain LPTV and Class A incumbents would be permitted for the first time in a long while to file applications for new stations.<sup>8</sup> Thus, opening additional spectrum for new digital LPTV and Class A stations at this time almost certainly will further congest spectrum and complicate repack.

Waiting to assign new spectrum to digital low power and Class A stations until repack issues are more fully resolved is reasonable. The Commission already has postponed issuing

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<sup>6</sup> See *Notice*, ¶ 27.

<sup>7</sup> In the *Notice*, the Commission states that until DTV television set penetration is sufficiently high in a served community, “many, if not most” LPTV station operators may prefer to seek additional channels for digital operations. See *id.*

<sup>8</sup> As described in the *Notice*, since 1991, the Commission has precluded the filing of applications for new stations located within 100 miles of the then 30 highest ranked television market-cities to preserve spectrum options for DTV service in those markets. See *id.*, ¶ 98 n.167. Under the Commission’s filing approach proposed in the *Notice*, licensees and permittees of LPTV and Class A stations within these areas would be permitted to file applications for new digital stations. See *id.*

DTV licenses to secondary facilities due to spectrum concerns<sup>9</sup> and additional delay only would be marginal, especially given that such stations still can transition to digital by flash-cutting. Full power broadcasters already have numerous issues that they must consider while completing their digital plans. Given the significance of recovering analog spectrum,<sup>10</sup> the Commission should focus on expediting – not extending – the DTV transition.

**B. The Secondary Status of New Digital LPTV Operations is No Panacea.**

The Commission and others may be enticed to disregard the problems of assigning additional spectrum to LPTV stations because they are secondary, but this would be hazardous. Although in the *Notice* the Commission states that new digital LPTV stations must operate on a non-interfering basis to full power stations,<sup>11</sup> experience suggests that full power stations still must account for such secondary stations. As an initial matter, the Commission would allow primary Class A stations to seek a paired channel, and that channel would at some point gain primary status.<sup>12</sup> In the *Notice*, the Commission states: “[t]he secondary nature of the additional

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<sup>9</sup> In limiting initial eligibility for DTV licenses to existing full-service television broadcasters, the Commission noted its previous determination that “there is insufficient spectrum to include LPTV stations and translators, which are secondary under our rules and policies, to be initially eligible for a DTV channel.” Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, ¶ 18 (1997) *citing* 7 FCC Rcd 3340, ¶ 42 (1992). In addition, in the Commission’s Class A *Report and Order*, the Commission deferred matters regarding the issuance of additional DTV licenses for Class A stations noting its concern to preserve spectrum to accommodate the needs associated with the transition of full-service stations to digital. *See* Establishment of a Class A Television Service, *Report and Order*, 15 FCC Rcd 6355, ¶ 95 (2000), *on recon.*, 16 FCC Rcd 8244 (2001) (“*Class A Report and Order*”). In addition, the Commission observed that a number of issues regarding the transition were yet to be resolved in future DTV proceedings. *See Class A Report and Order*, ¶ 95.

<sup>10</sup> *See Second Periodic Review NPRM*, ¶¶ 41-46.

<sup>11</sup> *Notice*, ¶ 28.

<sup>12</sup> *See id.*, ¶ 109 n. 181.

channel that would be awarded to Class A stations. . . does not mean that Class A stations would be denied protected Class A status on their digital channel either after the digital transition or at some later point in that transition.”<sup>13</sup> Thus, as even the Commission admits, its new so-called “secondary” service, at least for Class A stations, would not be “secondary” for long. As primary stations, such new digital Class A stations would inhibit further the transition of full-service stations to digital.

More to the point, however, secondary LPTV stations have impeded a number of full power stations from transitioning to digital. For example, Liberty stations KLTV-DT, Tyler, Texas and KTRE-DT, Lufkin, Texas, have yet to receive construction permits on their requested channels due to the objections of LPTV stations.<sup>14</sup> Others have been similarly frustrated.<sup>15</sup> It is no answer to assert that such obstructions are limited to DTV channel changes, because that is what repack is – channel changes. Furthermore, this is occurring in rural areas, precisely where the Commission believes new digital LPTV stations will most help.<sup>16</sup> As such, the Commission

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<sup>13</sup> *Id.*

<sup>14</sup> See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) and (Lufkin, Texas), *Report and Order*, 17 FCC Rcd 19452 (Video Div. 2002), *recon. denied*, DA 03-2830 (Video Div. rel. Sept. 12, 2003). In the *Report and Order*, the Commission adopted the requested substitution of DTV Channel 10 for station KLTV(TV)’s assigned DTV Channel 38 at Tyler, Texas, and of DTV Channel 11 for station KTRE(TV)’s assigned DTV Channel 43 at Lufkin, Texas.

<sup>15</sup> See e.g., Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kingston, New York), *Report and Order*, 17 FCC Rcd 1485 (Video Div. 2002), *recon. denied*, 17 FCC Rcd 14326 (Video Div. 2002), *recon. denied*, FCC 03-209 (FCC rel. Sept. 5, 2003). See also Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida), *Report and Order*, 17 FCC Rcd 7114 (Video Div. 2002), *recon. granted in part, denied in part*, 17 FCC Rcd 23528 (Video Div. 2002)(affirming DTV channel change decision due to acceptability of proposal with respect to Class A station).

<sup>16</sup> See Notice, ¶ 18.

should not rely on the secondary status of new digital LPTV stations when considering the problems of assigning additional spectrum to them.

**C. To Open Spectrum Opportunities, the Commission First Should Establish Distributed Transmission Networks and Distributed Translators.**

Prior to assigning additional spectrum to digital LPTV and Class A stations, the Commission should allow for the creation of distributed DTV transmission networks and distributed translators,<sup>17</sup> which will open up more spectrum for all, including new LPTV and Class A channels and stations. Distributed transmission systems could make spectrum available by allowing stations to adjust and optimize the energy distribution of their signal, permitting them to serve hard-to-reach locales or atypical population distributions and to reduce reliance on translators. Given the significance of increasing spectrum availability, the Commission accordingly should move first to allow for this innovation in broadcast technology before assigning new spectrum to digital LPTV and Class A stations.

**II. THE COMMISSION ONLY SHOULD PROVIDE ADDITIONAL SPECTRUM FOR NEW DIGITAL LPTV AND CLASS A STATIONS WHEN THERE IS NO CONTOUR OVERLAP WITH FULL POWER STATIONS.**

If the Commission is bound to provide additional spectrum to digital LPTV and Class A stations, it only should do so in instances where the proposed service area would not overlap that of any authorized full power station, no matter what the channel.<sup>18</sup> By prohibiting such contour

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<sup>17</sup> See *Second Periodic Review NPRM*, ¶¶ 99-106.

<sup>18</sup> The Commission only should authorize new digital LPTV and Class A stations when the station's proposed service area would not overlap the Grade B contour of any analog full power station as set forth in Section 73.683(a) of the Commission's Rules or as specified in Section 73.622(e)(1) for DTV full power stations. The relevant contours for LPTV and Class A stations would be those set forth in Section 73.6010.

overlap, the Commission would best protect full power stations from interference caused by secondary digital LPTV stations. Similarly, interference to the new digital LPTV and Class A stations would be limited. Such stations would be able to function properly in a manner that minimizes disruption of existing service. This approach would allow for gains in rural areas – where the Commission seeks to improve service – while addressing concerns about the impact on repack.

Prioritizing full power stations in this manner is in the public interest. The Commission already is burdened with processing a number of applications for new construction permits, some of which have been pending for more than seven years. For example, on September 20, 1996, an affiliate of Liberty, Cosmos Broadcasting Corporation, submitted an application for a new television station on Channel 32 to serve Myrtle Beach, South Carolina.<sup>19</sup> It would be unreasonable to force the Commission to consider applications for new secondary digital LPTV stations while still processing long-pending applications for new primary services.

## **CONCLUSION**

The Joint Broadcasters agree that digital LPTV and Class A stations will play a significant role in furthering the digital transition and support the Commission's proposal to allow these stations to "flash-cut" to digital. Because of the limited available spectrum and still-uncertain repack process, however, the Commission should not assign new spectrum for paired

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<sup>19</sup> See FCC File No. BPCT-19960920WV.



digital LPTV or Class A operation or for new non-incumbent operation until repack issues are more fully resolved.

Respectfully submitted,

**COX BROADCASTING, INC.  
THE LIBERTY CORPORATION**

By: /s/ Kevin F. Reed  
Kevin F. Reed  
John S. Logan  
Scott S. Patrick  
Melissa A. Marshall

Their Attorneys

DOW, LOHNES & ALBERTSON, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2000

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## **Exhibit A**

Cox Broadcasting, Inc., either through a parent company or subsidiaries, owns the following full power and low power television stations located in various sized markets throughout the United States: WSB-TV, Atlanta, Georgia; WFTV(TV), Orlando, Florida; WRDQ(TV), Orlando, Florida; WPXI(TV), Pittsburgh, Pennsylvania; WJAC-TV, Johnstown, Pennsylvania; W07CD, State College, Pennsylvania; WTOV-TV, Steubenville, Ohio; WSOC-TV, Charlotte, North Carolina; WAXN(TV), Kannapolis, North Carolina; KIRO-TV, Seattle, Washington; K30FL, Port Angeles, Washington; K53AZ, Centralia, Washington; K54AO, Bremerton, Washington; K54GS, Puyallup, Washington; K58BW, Everett, Washington; K67GJ, Point Pulley, Washington; KFOX-TV, El Paso, Texas; KTVU(TV), Oakland, California; KICU-TV, San Jose, California; K29AB, Monterey, California; KRXI-TV, Reno, Nevada; K17CA, Carson City, Nevada; and K36GL, Lovelock, Nevada; and WHIO-TV, Dayton, Ohio.

The Liberty Corporation, through subsidiaries, owns the following full power television stations located in small markets throughout the South and Midwest: WIS(TV), Columbia, South Carolina; WSFA(TV) , Montgomery, Alabama; WTOL(TV), Toledo, Ohio; KPLC(TV), Lake Charles, Louisiana; KAIT(TV), Jonesboro, Arkansas; WAVE(TV), Louisville, Kentucky; WFIE(TV), Evansville, Indiana; WLOX(TV), Biloxi, Mississippi; WALB(TV), Albany, Georgia; KGBT-TV, Harlingen, Texas; WWAY(TV), Wilmington, North Carolina; KCBD(TV), Lubbock, Texas; KTRE(TV), Lufkin, Texas; WLBT(TV), Jackson, Mississippi; and KLTV(TV), Tyler, Texas.